

Questions and Answers

Notice of Availability for Draft Economic Analysis on the Proposed Critical Habitat for Diamond darter (*Crystallaria cincotta*)

In July 2012, after extensive evaluation, [the Service proposed](#) that the diamond darter be protected as endangered under the Endangered Species Act and that a total of 123 river miles be established as critical habitat in West Virginia and Kentucky. The critical habitat includes areas in Kanawha and Clay counties, West Virginia, and in Edmonson, Hart and Green counties, Kentucky.

The [diamond darter](#), a small member of the perch family named for its sparkling reflections, could once be found along the southern Appalachians from Ohio to Tennessee, but years of changes from dams and channeling restricted this native fish to one stream along the Elk River in West Virginia. Fewer than 50 diamond darters have been collected in the river during the last 30 years.

1. What is the U.S. Fish and Wildlife Service announcing?

The Service has analyzed the economic impacts of designating critical habitat under the Endangered Species Act for the diamond darter. The agency today released a draft economic analysis concluding that costs related to the proposed critical habitat for the diamond darter would be narrow and mostly administrative. Additionally, the designation would not have a significant economic impact on a substantial number of small entities, such as county governments, small businesses and organizations. The draft economic analysis is available for public comment through the Regulations.gov public comment portal (<http://www.regulations.gov>); search for Docket No. FWS-R5-ES-2012-0045.

2. What is an economic analysis?

The purpose of the analysis is to identify and analyze the potential economic impacts associated with designating critical habitat, which applies to federal lands or federally funded or permitted activities on private lands.

The analysis looks at foreseeable costs over 20 years for the Service, other federal or state agencies, companies, organizations and small businesses, which for the diamond darter could include small-scale logging operations, farms or private landowners.

The analysis only looks at costs specifically related to critical habitat designation, meaning it does not analyze the baseline costs of protecting the diamond darter as endangered.

For the diamond darter, these costs are mostly the administrative costs of consulting with federal agencies to protect the diamond darter through avoiding destruction or adverse modification of its critical habitat. These costs may

include, for example, the additional amount of staff time spent to further describe project impacts to critical habitat. The costs stem from the requirement that federal agencies consult with the Service on the impacts to critical habitat from the activities they carry out, fund or authorize.

3. What is critical habitat, and whom does it affect?

Critical habitat designation does not set up a preserve, and it does not allow government or public access to private land. Critical habitat is a term in the Endangered Species Act that refers to specific geographic areas that contain features essential for the conservation of a threatened or endangered species. For the diamond darter, these features include large, warm water streams with pools and riffles, clean sand and gravel substrates, insects for food, and other elements. Designating critical habitat under the ESA is for the purposes of consulting with federal agencies, which have to make special efforts to protect aspects of these areas. It applies only to federal actions – activities carried out, funded or authorized by a federal agency.

Critical habitat provides for the conservation of threatened and endangered species in several ways. Specifying these essential areas helps federal agencies determine where to use their authorities to benefit the species, as directed by the ESA. Critical habitat also helps other conservation partners, such as state and local governments, non-governmental organizations, and individuals, focus their conservation efforts. When the designation of critical habitat occurs near the time of listing, it provides early conservation planning guidance to bridge the gap until the Service can complete more thorough recovery planning.

Critical habitat can also provide significant regulatory protection for threatened and endangered species: the requirement that federal agencies consult with the Service to ensure actions they carry out, fund, or authorize are not likely to destroy or adversely modify critical habitat. The designation of critical habitat ensures that the federal government considers the effects of its actions on protected species and avoids or modifies those actions that are likely to destroy or adversely modify critical habitat.

4. What is included in the draft economic analysis?

The analysis takes a close look at human-related activities that may be affected by the designation of critical habitat. These activities are linked to the impacts that threaten the darter's existence, including siltation, alteration of stream banks and bottoms, channelization and diversion, nutrient enrichment, and other contamination of water.

The analysis provides the estimated costs for the following activity categories:

- (1) resource extraction (coal, gravel and rock mining, and oil and natural gas exploration) and utilities;
- (2) timber management, agriculture, and grazing;
- (3) other in-stream work (meaning work relate to pipeline crossings from dams,

- culverts, etc.);
- (4) transportation (roads, highways, bridges); and
- (5) water quality/sewage management.

See the DEA for a detailed description of the methodology and results.

5. What did the draft economic analysis find?

The analysis found that costs related to the proposed critical habitat for the diamond darter would be narrow and mostly administrative. Additionally, the designation would not have a significant economic impact on substantial number of small entities, such as county governments, small businesses and organizations.

Based on the best available information, including extensive discussions with stakeholders, the Service estimates that the designation will cost around \$800,000 over 20 years, or about \$70,000 annually. The majority of these costs are administrative and are borne by federal and state agencies, but some costs may be incurred by local governments and businesses.

These costs stem from the requirement that federal agencies consult with the Service on the impacts on critical habitat from the activities they carry out, fund or authorize.

Transportation activities are likely to be subject to the greatest incremental impacts at \$320,000 over the next 20 years, followed by timber management, agriculture, and grazing at \$260,000; resource extraction at \$150,000; other in-stream work at \$50,000; and water quality/sewage management at \$18,000 (present values over 20 years assuming a 7 percent discount rate).

The analysis identified the following small entities, as defined under Regulatory Flexibility Act (and amended by the Small Business Regulatory Enforcement Fairness Act of 1996), that may need to consult with the Service on the impacts of their actions to critical habitat:

- The governments of Clay County, W.Va., and Hart, Green and Edmonson counties, Kentucky (for utility pipeline and in-stream activities);
- Less than half of the small mining companies in the five counties; and
- 190 other entities regarding timber management, agriculture and grazing activities. These could include small-scale logging operations, farms or private landowners.

These consultations would need to occur only in situations with a federal nexus, such as federal permits or funding.

More details on the methods used to generate these estimates, as well as the estimated impacts, are available in the draft economic analysis.

6. Could critical habitat keep a transportation, agriculture, mining or utility project from acquiring the necessary permits?

There is a close relationship between the health of the diamond darter and the health of its habitat. Alterations of habitat that diminish the value and the amount of diamond darter habitat would likely affect its population size and ability to recruit, cause further range declines and could appreciably reduce the species' likelihood of survival and recovery in the wild. Such habitat alterations could, therefore, constitute jeopardy to the species or adverse modification to its habitat.

The Service consults with other federal agencies on actions they implement, fund or authorize to ensure those actions will not jeopardize a listed species or adversely modify a listed species' critical habitat. Due to the close ties between the survival of the diamond darter and the quality of its habitat, the Service will likely request similar conservation efforts to protect both the species and its critical habitat. It is possible that a transportation, agriculture, mining, or utility project that may impact critical habitat could be delayed until the federal agencies can consult on the project and work together to revise the project so it does not destroy or adversely modify the diamond darter's critical habitat.

7. Why did the Service conduct an economic analysis?

The ESA (under section 4(b)(2)) requires the Service to consider economic impacts when it designates critical habitat for species. The Service will use the information in the analysis to determine whether any part of the proposed designation should be excluded for economic reasons in the final designation.

The Service [has proposed](#) that these economic analyses be completed and made available for public comment at the same time as the proposed designation of critical habitat. However, that proposal has not yet been finalized, so this analysis has followed the Service's proposal to list the darter.

8. Does critical habitat provide more protection for listed species?

Listed species and their habitat are protected by the ESA whether or not they are in an area designated as critical habitat. The ESA would provide protection for the darter and its habitat simply by listing it as endangered. Designating critical habitat adds further emphasis on protecting the elements that make that habitat essential to conserving the darter, such as very clear water and extensive sand and gravel bars free of mud and silt. To understand the additional protection that critical habitat provides to an area, it is first necessary to understand the protection afforded to any endangered or threatened species, even if critical habitat is not designated for it.

The ESA forbids anyone to import, export, or engage in interstate or foreign sale of endangered and threatened animals and plants without a special permit. It also makes "take" illegal -- forbidding the killing, harming, harassing, pursuing, or removing the species from the wild.

The ESA requires that federal agencies conduct their activities in such a way as to conserve species. It also requires federal agencies to consult with the Service to conserve listed species on their lands and to ensure that any activity they carry out, fund or authorize will not jeopardize the survival of a threatened or endangered

species. This is known as consultation under section 7 of the ESA.

In consultations for species with critical habitat, federal agencies are required to ensure that their activities do not destroy or adversely modify critical habitat to the point that it can no longer serve its conservation role in the species' recovery. The greatest benefit of critical habitat occurs in areas that are currently unoccupied by the species, but are needed for its recovery. With critical habitat designations, these unoccupied areas are protected by the prohibition against destruction and adverse modification of critical habitat.

9. How will critical habitat influence conservation efforts?

Critical habitat influences how federal agencies carry out, fund or authorize activities in those areas. Especially in these areas, the Service will consult with other federal agencies under the ESA (section 7) to protect the diamond darter and its critical habitat. The Service's recommendations could include minimizing disturbances to lands near the river and conducting project activities away from the river. These requests would be similar to those already requested in these areas for threatened and endangered mussels.

Critical habitat also provides a context for conserving the diamond darter, through specifying areas that are essential to the diamond darter's recovery. If the species' listing is finalized, the Service will later develop a recovery plan for the darter. The plan could include activities such as regular monitoring of populations, working with partners to reduce threats to its habitat, or developing a captive-held population in the case that an event eliminates the current population.

10. What is included in the proposed critical habitat for the darter?

The Service determined that a total of 123 river miles are essential to the diamond darters' conservation. This critical habitat would include 28 miles of occupied habitat in Kanawha and Clay counties, West Virginia, and 95 miles of unoccupied habitat in Edmonson, Hart and Green counties, Kentucky. In West Virginia, these areas are portions of the river that are publicly owned. In Kentucky, these areas are portions of the river that are mostly privately owned, with a large amount under conservation programs.

However, the economic analysis used a broader study area for the analysis. This helped capture the land and water use threats occurring outside of the proposed critical habitat that may affect the physical and biological features of critical habitat. These portions of the river lands within the river watersheds are mostly privately owned.

11. How would a critical habitat designation affect my private land?

In general, a critical habitat designation has no impact on private landowners taking actions on their land that do not require federal funding or permits.

Critical habitat designations apply only to federal lands and to activities on private lands that are carried out, funded or authorized by a federal agency. Activities on

private or state lands that are carried out, funded, or authorized by a federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, or a section 402 permit under the Clean Water Act from the Environmental Protection Agency, will be subject to the section 7 consultation process with the Service if those actions may affect critical habitat or a listed species.

Through this consultation, the Service would advise agencies whether the permitted actions would likely jeopardize the continued existence of the species or adversely modify critical habitat. Federal actions not affecting critical habitat or otherwise affecting species or their habitat (e.g., suitable habitat outside of critical habitat), and actions on non-federal lands that are not carried out, funded or authorized by a federal agency will not require section 7 consultation.

12. When an area is designated as critical habitat, are all human activities in the area prohibited?

No. The only activities prohibited in these areas are federal actions that are likely to result in destruction or adverse modification of the critical habitat. In these situations, the Service consults with federal agencies to support the recovery of species and their ecosystems. Consultations provide ways to implement recovery tasks by addressing threats to listed species that may result from federal agency programs and activities through a collaborative process. For more information go to:

<http://www.fws.gov/endangered/esa-library/pdf/consultations.pdf>.

13. Where I can find more information?

The notice announcing the availability of the draft economic analysis publishes in the Federal Register on XX. Following its publication, the draft economic analysis will be available at www.regulations.gov, Docket # FWS–R5–ES–2012–0045, or on the Service's website at www.fws.gov/westvirginiafieldoffice/.

Learn more about the diamond darter ([PDF](#)) and the [proposal to protect it](#) under the Endangered Species Act.

14. How can I comment?

Comments may be submitted through XX by following methods:

- Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting information on docket number FWS–R5–ES–2012–0045.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS–R5–ES–2012–0045; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, Virginia 22203.

12. What are the next steps?

Following the close of the comment period, the Service will review comments and finalize its draft economic analysis. The Service will use the final analysis to

determine whether any part of the proposed designation should be excluded for economic reasons in the final designation.

The Service will also finalize its proposal to protect the darter as endangered under the ESA.